

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE: NEW ENGLAND COMPOUNDING
PHARMACY, INC. PRODUCTS LIABILITY
LITIGATION

)
) MDL No. 1:13-md-2419-FDS
)
)

This Document Relates To:

All Cases

**ARL BIO PHARMA, INC. ASSENTED-TO
MOTION TO STAY ALL RESPONSIVE PLEADINGS**

ARL Bio Pharma, Inc. (“ARL”) hereby moves for an order staying its obligation to file any responsive pleadings (“Motion”) in any matter related to the New England Compounding Pharmacy, Inc. (“NECC”) Products Liability Litigation. The Plaintiffs’ Steering Committee (“PSC”), Creditor’s Committee (“CC”), and New England Compounding Pharmacy, Inc.’s (“NECC”) Trustee (“Trustee”) have assented to this Motion. ARL states as follows in support of this motion:

1. ARL provided testing services for NECC product samples, including samples from certain lots of methylprednisolone acetate (“MPA”) that are in issue in this matter.

2. Pursuant to this Court’s MDL Order No. 7 [Doc. 438], ARL is required to file responsive pleadings in individual cases from Alabama, Kentucky, Louisiana, Nevada, Ohio, or Tennessee (“One Year SOL States”) on or before October 9, 2013 or the date provided by the Federal Rules of Civil Procedure, whichever is later. For all other cases, ARL’s obligation to file responsive pleadings to the individual complaints is stayed. ARL’s obligation to file responsive pleadings to the Master Complaint is December 2, 2013.

3. ARL has been sued in over 62 lawsuits, and is the subject of almost 300 claims, asserted by individuals who allege they were injured from contaminated MPA that NECC compounded. At least 46 of the lawsuits pending against ARL were filed within the past week in the US District Courts in One Year SOL States. ARL believes that there are many more plaintiffs and/or claimants, potentially up to 14,000, that intend to assert claims or file lawsuits against ARL. ARL disputes it is liable for any of the claims made against it.

4. ARL filed its Notice of Intent to Mediate on September 20, 2013. ARL's insurance policy that covers the claims and lawsuits against it is an eroding policy ("Policy"), and ARL, and the PSC, Trustee, and CC agree that it is prudent to preserve the available Policy limits pending the results of mediation. As such, the interested parties desire to avoid the unnecessary expense that ARL will incur in order to respond to over 46 complaints in the next few weeks and to an unknown number of complaints during the pendency of, or after, mediation.

5. ARL respectfully submits that, under the circumstances, no legitimate purpose will be being served by requiring ARL to file responsive pleadings at any time while it is participating in the mediation program, and that staying ARL's obligation to file such responses is in the best interest of all concerned parties, as it will preserve the funds available for settlement purposes.

6. ARL understands from the PSC that the primary purpose of requiring answers to complaints in One Year SOL States quickly is the identification of entities/persons who ARL believes may have comparative or contributive fault. ARL represents that it is currently not aware of potentially responsible entities other than the named defendants in the MDL or those parties that have received subpoenas from the PSC.

7. Based on the foregoing, ARL submits that good cause exists to grant the requested relief.

8. Counsel for ARL has spoken with counsel for the PSC and has provided a copy of this Motion to the PSC which has indicated that it, the CC, and the Trustee assent to this Motion.

WHEREFORE, ARL moves for an order staying its obligation to file responsive pleadings.

Respectfully submitted,

**ARL BIOPHARMA, INC. d/b/a
ANALYTICAL RESEARCH LABORATORIES**

By its attorneys,

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Dated: October 7, 2013

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing has been filed with the Clerk of the Court on October 7, 2013 using the ECF system that sent notification of this filing to all ECF—registered counsel of record via e-mail generated by the Court's ECF system.

/s/ Kristen R. Ragosta

*Attorney for ARL Bio Pharma, Inc. d/b/a
Analytical Research Laboratories*